

P.L. 99 499

SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT

TITLE III EMERGENCY PLANNING AND COMMUNITY  
RIGHT TO KNOW ACT OF 1986

SECTIONS 311/312  
MSDS and TIER II REPORTING

**"HOW TO COMPLY" PACKET**

FEBRUARY 2012

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## **BACKGROUND**

The Federal Emergency Planning and Community Right to Know Act (EPCRA) was passed by Congress in 1986. EPCRA was included as Title III of the Superfund Amendments and Reauthorization Act (SARA) and is sometimes referred to as SARA Title III. EPCRA provides for the collection and availability to the public and emergency responders information regarding the use, storage, manufacture, and release of hazardous chemicals in our communities. The law promotes a working relationship to improve hazard communication and emergency planning among government at all levels, business and community leaders, environmental and other public interest organizations, and individual citizens.

Kentucky has adopted EPCRA into law through Kentucky Revised Statutes 39 E and through regulations found in 106 KAR Chapter 1. The administrative body for implementation of EPCRA is the Kentucky Emergency Response Commission (KYERC) also known as the Commonwealth Emergency Response Commission (CERC). The KYERC may have up to 25 members each appointed by the Governor. The Director of Kentucky Emergency Management serves as the Chairperson for the KYERC. Other members include, but aren't limited to, the executive director of the Commission on Fire Protection Personnel Standards and Education or the executive director's designee, representatives of the Energy and Environment Cabinet, the Office of the State Fire Marshal, the Kentucky State Police, the Office of the Attorney General, affected industry, local government, health services, environmental interests, and other persons who have technical expertise in the emergency response field as the Governor deems appropriate. Members of the KYERC are appointed by the Governor for a term of two (2) years. Members serve until their successors are appointed and qualified. Members are eligible for reappointment.

SARA Title III also required each State's emergency response commission to establish local emergency planning districts. In Kentucky these districts correspond to the counties. Under KRS 39E 0.100 Local Emergency Planning Committees (LEPCs) were created. Although Kentucky has 120 counties, there are 118 LEPCs because the Northern Kentucky Counties of Boone, Campbell and Kenton have combined to form a joint LEPC. SARA Title III requires representation on the LEPC from the following groups: elected state and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities with Extremely Hazardous Substances. LEPCs use your Tier II Hazardous Material Inventory information to develop and exercise their local planning district's emergency response plan(s).

## **WHY IS HAZARDOUS MATERIAL INVENTORY REPORTING REQUIRED?**

Knowing what chemicals are present in your community and how to respond to their release can help safeguard you, your family and the emergency personnel whose job it is to respond to these releases. The inventory reporting and planning requirements established under EPCRA fulfill the citizens in your communities “right to-know” regarding what chemical(s) are being utilized, manufactured, or stored at a “regulated facility”. While citizens may request access to inventory reports and emergency plans developed under EPCRA, there are disclosure protections for trade secret chemical names and confidential on-site locations.

In addition to the annual inventory reporting requirements established for all substances meeting certain quantity and other criteria, EPCRA required that plans be developed for those substances designated as extremely hazardous (EHS) that are present at a facility above a threshold planning quantity (TPQ).

In Kentucky the plans developed under EPCRA are comprehensive facility emergency response plans and are commonly known as TAB Q-7. LEPCs use the chemical information provided on annual Tier II Hazardous Material Inventory Forms and working in conjunction with facilities develop TAB Q Plans that provide specific chemical data including: chemical name(s), volume, storage method, and health hazards. The LEPC and facility representatives use modeling to perform hazard analysis studies that identify a potential area of impact in the event of a release of these chemicals. Special facilities such as schools, day cares, nursing homes, and hospitals within the radius of concern are identified as are warning procedures, and potential protective actions. The TAB Q Plan also identifies the training and exercising requirements for personnel at the facility and for the community responders. Through developing, reviewing, exercising, and making these Plans available to the public, LEPCs help prepare their community in the event of a chemical release.

## WHO MUST COMPLY?

The owner or operator of a facility must submit Material Safety Data Sheets (MSDS) and an annual Tier II Hazardous Material Inventory report when all of the following conditions are met:

1. Facility is subject to the OSHA Hazard Communication Standard; and
2. Facility uses, manufactures, and/or stores a Hazardous Chemical and/or an “Extremely Hazardous Substance” (EHS); and
3. The quantity of one of these Hazardous Chemicals or Extremely Hazardous Substances is in excess of the “**Threshold Quantity**” (TQ).

### **The TQ for Hazardous Chemicals is**

- **10,000 pounds.**

You will need to report if your facility manufactures, stores, or uses at any time more than 10,000 pounds of any one hazardous chemical or mixture containing the TQ of a hazardous chemical as defined by the OSHA Hazard Communication Standard.

Hazardous Chemicals can not be found on any single list. The United States Environmental Protection Agency (USEPA) defines hazardous chemicals as: any substances for which a facility must maintain a Material Safety Data Sheet (MSDS) under the OSHA [Hazard Communication Standard](#), which lists the criteria used to identify a hazardous chemical. MSDSs are detailed information sheets that provide data on health hazards and physical hazards of chemicals along with associated protective measures. Over 500,000 products have MSDSs which are normally obtained from the chemical manufacturer. If you have any chemicals covered by the OSHA Hazard Communications Standard, those chemicals are also regulated under EPCRA.

### **The TQ for Extremely Hazardous Substances (EHS) is**

- **500 pounds or the listed Threshold Planning Quantity (TPQ), *whichever is less.***

An Extremely Hazardous Substance (EHS) is one of a group of specifically listed chemicals. Examples include, but are not limited to, chlorine, ammonia, sulfuric acid, hydrofluoric acid, nitric acid.

EHS are provided on the EPA List of Lists. A searchable version of this list is available at <http://yosemite.epa.gov/oswer/lol.nsf/homepage>. The list contains the name of the chemical, the Chemical Abstracts Service (CAS) number, and TPQ. There are NO trade names on this list, only specific chemical names. The specific chemical names may appear in the list of active ingredients on the label of a trade-named product/material, or they may be stated on the Material Safety Data Sheet.

## EXEMPTIONS UNDER THIS PROGRAM

There are five exemptions for MSDS and Tier II reporting requirements under EPCRA:

- (1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.
- (2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.
- (3) Any substance to the extent it is used for personal, family or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.
- (4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.
- (5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

## QUANTITY EXCEPTION FOR RETAIL GAS STATIONS

On February 11, 1999, the EPA issued a final rule raising thresholds that trigger MSDS Section 311 reporting and Section 312 annual chemical inventory reporting (Tier II) under EPCRA for gasoline and diesel stored entirely in underground storage tanks at retail gas stations that are in compliance with requirements for Underground Storage Tanks (UST).

The final rule promulgated threshold levels of

- **75,000 gallons for gasoline**
- **100,000 gallons for diesel fuel.**

For purposes of this rule, EPA defines "retail gas station" as "a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land."

## CALCULATION OF QUANTITY IN STORAGE

### Step 1

In order to determine if you have a TQ (the amount that triggers inventory reporting) of a Hazardous Chemical or Extremely Hazardous Substance **you must first inventory your chemicals**. If you are in compliance with the OSHA Hazard Communication Standard, you already have your **Material Safety Data Sheets (MSDS)** gathered and know what chemicals you have. If you have not done this, you need to collect this information. **NOTE:** MSDSs without a date were published prior to 1985. Facilities which have old MSDSs, or no MSDS for a chemical, should call their supplier and request a new one. Suppliers are required by law to provide updated copies on request.

### Step 2

Determine how much (ie. amount in pounds) of the Hazardous Chemical(s) or Extremely Hazardous Substance(s) your facility has on site. You may wish to create a spreadsheet that lists each trade name or pure substance you have in one column and the ingredients (composition) shown on the MSDS in another column. In another column list the percent concentration for each ingredient on the MSDS. For substances having a range of concentration use the maximum percentage shown. When II or more trade names or mixtures contain the same ingredient, list the amount of the ingredient in the same column to facilitate adding the quantities together. When your inventory is done, **figure the ingredient weight in pounds** and add the columns to give the total weight of each *individual* ingredient. Any hazardous ingredient present in amounts of one percent or more in a mixture must be listed. If the chemical is a carcinogen (this should be listed on an MSDS) it must be listed if present in excess of 0.1 percent. These percentages are known as the *de minimis* concentrations. Hazardous ingredients must be listed whether they are active or inert. Examples of inert hazardous ingredients include flammable or toxic solvents used as a carrier, compressed gas as a propellant and contaminants.

**All Amounts must be calculated in pounds.** To convert gas or liquid volume to weight in pounds, multiply the volume amount by the specific gravity factor. For pure substances the total weight is determined by adding together the weight of each container of the substance. There are two options to use when calculating your chemical inventory for mixtures.

1. Report the weight of the entire mixture as a whole or
2. Only report the portions of the mixture that is a hazardous material. This is done by multiplying the weight of the chemical by the percent concentration of the chemical.

For example: A forklift battery with an electrolyte containing 70% sulfuric acid may have a total weight of 1000 pounds. The sulfuric acid may be reported either as 1000 pounds or as  $0.70 \times 1000 \text{ pounds} = 700 \text{ pounds}$ . Either number would still need to be multiplied by the total number of forklift batteries at the facility to report the total amount of sulfuric acid for the facility.

## REPORTING PROCEDURES

MSDS and Tier II hazardous material inventory forms for those substances meeting or exceeding the quantities listed previously must be submitted to the Kentucky Emergency Response Commission (KYERC), the appropriate Local Emergency Planning Committee (LEPC) and the local fire department (FD) with jurisdiction for the facility.

Individual MSDS or lists of MSDS must only be submitted once unless the chemical or product changes. Facilities should update MSDS submittals to agencies within 90 days for hazardous substances and within 60 days for extremely hazardous substances when:

- there is new information on a hazardous substance that has previously been submitted, or
- a new hazardous substance arrives at the facility in excess of the threshold quantity for the first time.

Tier II Hazardous Material Inventory forms must be submitted annually to the KYERC, LEPC and FD between January 1 and March 1. These reports cover substances that were manufactured, used or stored during the previous calendar year.

The KYERC prefers Tier II Hazardous Material Inventory Forms be prepared using the EPA “Tier 2 Submit” program but will accept hard copy submission. The “Tier 2 Submit” program supports both the preparation of an electronic file and the printing of a hardcopy. The “Tier 2 Submit” program can be found at <http://www.epa.gov/emergencies/content/epcra/tier2.htm>. Most Kentucky LEPCs and Fire Departments are equipped to receive hardcopy submission. However, Louisville-Jefferson County LEPC and Lexington-Fayette LEPC require electronic submission using Tier 2 Submit. A list of LEPC contacts is available at <http://kyem.ky.gov/teams/Pages/LEPC.aspx>

The KYERC charges a fee for Tier II submission. To determine proper payment for your facility(s) refer to the section of this document entitled “Kentucky Tier II Fee Schedule”. There is no fee for LEPC or FD submissions.

Electronic copies of the Tier II can be submitted either by e-mail to [kytier2reports@ng.army.mil](mailto:kytier2reports@ng.army.mil) or by CD to the KYERC address provided below.

EPCRA allows the exact location of hazardous substances at a facility to be kept confidential. Facilities wishing to keep this information confidential must submit a hard copy of the [Tier II Confidentiality Form](#) (PDF-325KB).

Companies operating multiple facilities are requested to submit a hard copy of the [Multiple Facility Form](#) (PDF-174KB) in addition to the Tier II form and fees.

In order to be considered a completed submission, the appropriate fee must be received by the KYERC.

Hard copies of forms and all fees should be submitted to the following location:

Kentucky Emergency Response Commission  
EOC, Boone Center  
100 Minuteman Parkway  
Frankfort, KY 40601 6168

Failure to comply with Tier II regulations may result in referral to Region IV of the EPA and assessment of penalties by that Agency.

## **KENTUCKY TIER II FEE SCHEDULE**

Between January 1 and March 1

Make check payable to: Kentucky State Treasurer

Mark all checks: "For KyERC Account"\* **\*NOTE: Failure to indicate “For KyERC Account” may result in the check being incorrectly deposited. Please be sure to mark “For KyERC Account.”**

Mail to:

Kentucky Emergency Response Commission  
EOC, Boone Center  
100 Minuteman Parkway



Fees shall be payable in accordance with the schedule listed below except the same owner or owners of two or more facilities in a single county subject to paying a fee shall pay a fee not to exceed \$250 for all those facilities in that county. *If your check covers payment for more than one facility, please use the [Multiple Facility Form](#)*

\$0	Category One Facility
\$40	Category II Facility
\$250	Category Three, Four and Five Facilities

## CATEGORY DEFINITIONS

### Category One Facility

Any facility owned or operated by local, state or federal government. Category One facilities are exempted from paying any fee in accordance with KRS 39E.050. This exemption applies solely to fees and does not exempt any Category One Facility from reporting requirements.

### Category Two Facility

Any facility that has ten thousand (10,000) pounds and not more than four hundred ninety nine thousand, nine hundred ninety nine (499,999) pounds of each of ten (10) or fewer hazardous substances at any time during the calendar year. The combined total of all hazardous substances shall not exceed four hundred ninety nine thousand, nine hundred ninety nine (499,999) pounds.

### Category Three Facility

Any facility that has ten thousand (10,000) pounds or more of each of eleven (11) or more hazardous substances. **The combined total of all hazardous substances** shall not exceed four hundred ninety nine thousand, nine hundred ninety nine (499,999) pounds.

### Category Four Facility

Any facility that has a **total inventory** of over four hundred ninety nine thousand, nine hundred ninety-nine (499,999) pounds of hazardous substances. (Poundage must be listed on the form.)

### Category Five Facility

Any facility that has an Extremely Hazardous Substance listed in 40 CFR 355 as amended (EPA's list of Extremely Hazardous Substances) in excess of the threshold planning quantity or 500lbs whichever is less.

## **DIRECTIONS FOR COMPLETING THE TIER II HAZARDOUS MATERIAL INVENTORY FORM**

For those not using “Tier 2 Submit” program, a hardcopy of the Tier II form is available at <http://www.epa.gov/oem/content/epcra/tier2.htm>. The following directions provide guidance for filling out the individual sections of the Tier II hardcopy form. The “Tier 2 Submit” program contains drawdown menus that assist the user in preparation of the form.

### **FACILITY IDENTIFICATION**

Enter the full name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that describe the physical location of your facility (e.g., longitude and latitude). Include city, county, state and zip code. **Although not required, the provision of a longitude and latitude greatly assists the KYERC in identification of facility location and is highly encouraged.**

On December 3, 2008, the EPA finalized changes to the Emergency Planning Notification, Emergency Release Notification and Hazardous Chemical Reporting regulations that were proposed on June 8, 1998. These regulations included requiring facilities to report the North American Industry Classification System (NAICS) code for their facility on their forms instead of the Standard Industrial Classification (SIC) code. **NOTE:** Submitters using the old hardcopy of the Kentucky Tier II form should indicate in the SIC code block if they are using the NAICS since the form has not been updated to reflect this revision.

### **REPORTING PERIOD**

Enter the appropriate calendar year, beginning January 1 and ending December 31. Remember that the reporting year is always the year previous to the current calendar year.

### **OWNER/OPERATOR**

Enter the owner or operator’s full name, mailing address, and phone number.

### **EMERGENCY CONTACT**

Enter the name, title, and work phone number of at least one local person or office who can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility.

Provide an emergency phone number where such emergency information will be available 24 hours a day, every day. The requirement is mandatory. The facility must make some arrangement to ensure that a 24-hour contact is available.

### **IDENTICAL INFORMATION**

Check the box indicating identical information, located below the emergency contacts on the Tier II form, if the current chemical information being reported is identical to that submitted last year. Chemical descriptions, hazards, amounts, and locations must be provided in this year's form, even if the information is identical to that submitted last year.

## CHEMICAL INFORMATION

The main section of the Tier II form requires specific information on amounts and locations of hazardous chemicals, as defined in the OSHA Hazard Communication Standard.

### Chemical Description

1. Enter the Chemical Abstract Service registry number (CAS). For mixtures, enter the CAS number of the mixture as a whole if it has been assigned a number distinct from its constituents. For a mixture that has no CAS number, leave this item blank or report the CAS numbers of the majority hazardous component. If one of the components is an EHS and is above the TPQ use this CAS number. If you are withholding the name of the chemical as a Trade Secret enter the generic class of the chemical (eg. organic isocyanate, petroleum hydrocarbon) and check the line labeled Trade Secret. In order to use this designation you must have received approval from the EPA in conformance with their regulation regarding trade secrecy (53 FR 28772, July 9, 1988). You must present substantiation of this designation from the EPA.
2. Enter the chemical name or common name of each hazardous chemical.
3. Check the boxes for *ALL* applicable descriptors for the identified chemical as it is stored or used at the facility: pure and/or mixture; *and* solid, liquid, gas or any combination thereof; and whether the chemical is or contains an EHS.
4. If the chemical is a mixture containing an EHS, enter the chemical name of each EHS in the mixture.

### Physical and Health Hazards

For each chemical you have listed, check all the physical and health hazard boxes that apply. These hazard categories are defined in 40 CFR 370.2. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200. The health and physical hazard information will be contained on the MSDS for the chemical or compound. A comparison of EPA and OSHA Hazard Categories is provided on the Table I.

**Table I Hazard Category Comparison for Reporting Under Section 311 and 312**

<u>EPA's Hazard Categories</u>	<u>OSHA's Hazard Categories</u>
Fire Hazard	Flammable solid, Combustible Liquid, Pyrophoric, Oxidizer
Sudden Release of Pressure	Explosive, Compressed Gas
Reactive	Unstable Reactive, Organic Peroxide, Water Reactive
Immediate (Acute) Health Hazards	Highly Toxic, Toxic, Irritant, Sensitizer, Corrosive Corrosive, Other hazardous chemicals with an adverse effect with short term exposure

Delayed (Chronic)  
Health Hazard

Carcinogens, Other chemicals with an adverse effect  
with long term exposure

## Inventory

### Maximum Daily Amount

1. For each hazardous chemical, estimate the greatest amount present at your facility on any single day during the reporting period.
2. Find the appropriate range value code in Table I.
3. Enter this range value as the Maximum Amount.

### Average Daily Amount

1. For each hazardous chemical, estimate the average weight in pounds that was present at your facility during the year. To do this, total all daily weights and divide by the number of days the chemical was present on the site.
2. Find the appropriate code for the weight range in Table II.
3. Enter this code as the Average Daily Amount.

**Table II REPORTING RANGES**

Code	Weight Range in Pounds	
	From...	To...
01	0	99
02	100	999
03	1,000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	1 billion	higher than 1 billion

### Number of Days On-Site

Enter the number of days that the hazardous chemical was found on-site.

### Storage Codes

**Storage Codes:** Indicate the types and conditions of storage present:

For **each** location, find the appropriate storage type on Table III and enter the corresponding code in the first box.

For each location, find the appropriate storage types for pressure and temperature conditions on Table IV. Enter the applicable pressure code in the second box. Enter the applicable temperature code in the third box.

**Table III - STORAGE TYPES**

<b>CODES</b>	<b>Types of Storage</b>
A	Above ground tank
B	Below ground tank
C	Tank inside building
D	Steel drum
E	Plastic or non-metallic drum
F	Can
G	Carboy
H	Silo
I	Fiber drum
J	Bag
K	Box
L	Cylinder
M	Glass bottles or jugs
N	Plastic bottles or jugs
O	Tote bin
P	Tank wagon
Q	Rail car
R	Other

**Table IV - PRESSURE AND TEMPERATURE CONDITIONS**

<b>CODES</b>	<b>Storage Conditions</b>
	(PRESSURE)
1	Ambient pressure
2	Greater than ambient pressure
3	Less than ambient pressure
	(TEMPERATURE)
4	Ambient temperature
5	Greater than ambient temperature
6	Less than ambient temperature but not cryogenic
7	Cryogenic conditions

**Example:** Benzene in the main building is kept in a tank inside the building, at ambient pressure and less than ambient temperature. Table III shows you that the code for a tank inside a building is C. Table IV shows you that the code for ambient pressure is 1, and the code for less than ambient temperature is 6.

You enter: 

C	1	6
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## **STORAGE LOCATIONS (NON-CONFIDENTIAL)**

Provide a brief description of the precise location of the chemical, so that emergency responders can locate the area easily. You may find it advantageous to provide the optional site plan or site coordinates as explained below.

For each chemical, indicate at a minimum the building or lot. Additionally, where practical, the room or area may be indicated. You may respond in narrative form with appropriate site coordinates or abbreviations.

If the chemical is present in more than one building, lot, or area location, continue your responses down the page as needed. If the chemical exists everywhere at the plant site simultaneously, you may report that the chemical is ubiquitous at the site.

Optional attachments: If you choose to attach one of the following, check the appropriate Attachments box at the bottom of the Tier II form.

- a. *A site plan* with site coordinates indicated for buildings, lots, areas, etc. throughout your facility.
- b. *A list of site coordinates abbreviations* that correspond to buildings, lots, areas, etc. throughout your facility.
- c. *A description of dikes and other safeguard measures* for storage locations throughout your facility.

## **STORAGE LOCATION (CONFIDENTIAL INFORMATION)**

Under EPCRA, Section 324, you may elect to withhold location information on a specific chemical from disclosure to the public. If you choose to do so:

- Enter the word “confidential” in the Non-Confidential Location section of the Tier II form on the first line of the storage locations.
- On a separate Tier II Confidential Location Information Sheet, enter the name and CAS number of each chemical for which you are keeping the location confidential.
- Enter the appropriate location and storage information, as described above for non-confidential locations.
- Submit the [Tier II Confidentiality Form](#) (PDF-325KB) with the Tier II form. This separates confidential locations from other information that will be disclosed to the public.

If you are completing the Tier II using the **EPA Tier 2 Submit Program** and wish to keep the storage location for a particular chemical **Confidential**, type the word Confidential in the Storage Location space and submit the Tier 2 file with the Tier II Confidentiality Form.

## **CERTIFICATION**

The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier II submission is true, accurate, and complete. On the first page of the Tier II report, enter your full name and official title. Sign your name and enter the current date. Also, enter the total number of pages included in the Confidential and Non-Confidential Information Sheets as well as all attachments. An original signature is required on at least the first page of the submission. Submissions to the SERC, LEPC, and fire department must each contain an original signature on at least the first page. Subsequent pages must contain either an original signature, a photocopy of the original signature, or a signature stamp. Each page must contain the date on which the original signature was affixed to the first

page of the submission and the total number of pages in the submission. The EPA recognizes the name entered in the signature block of the “Tier 2 Submit” program Certification page as an official signature.